

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

October 24, 2007

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No. 06-40659  
Summary Calendar

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Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

REYNALDO CADENAS-SANCHEZ, also known as Jesus Martinez-Guardiola

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:05-CR-2380

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Before JONES, Chief Judge, and REAVLEY and PRADO, Circuit Judges.

PER CURIAM:\*

Reynaldo Cadenas-Sanchez (Cadenas) appeals his guilty-plea conviction and sentence for being illegally present in the United States following a prior deportation, in violation of 8 U.S.C. § 1326. Cadenas contends that the district court erred in imposing a 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(ii) because his prior Texas conviction for aggravated assault is not a crime of violence under the Sentencing Guidelines. The Texas statute, TEX. PENAL CODE § 22.02, is substantially similar to the definition of "aggravated

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

assault” under the Model Penal Code and thus qualifies as the enumerated offense of “aggravated assault” under the Guidelines. See *United States v. Guillen-Alvarez*, 489 F.3d 197, 199-201 (5th Cir. 2007).

In light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), Cadenas challenges the constitutionality of § 1326(b)’s treatment of prior felony and aggravated felony convictions as sentencing factors rather than elements of the offense that must be found by a jury. This court has held that this issue is “fully foreclosed from further debate.” *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), petition for cert. filed (Aug. 28, 2007)(No. 07-6202). The judgment of the district court is **AFFIRMED**.